

**PROPOSED ORDER
OF THE WISCONSIN DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION
ADOPTING RULES**

- 1 The Wisconsin department of agriculture, trade and consumer protection proposes the following
- 2 rule *to repeal* Ch. ATCP 104; *relating to* Leaf Tobacco Buying and Selling.

**Analysis Prepared by the Department
of Agriculture, Trade and Consumer Protection**

Statutes Interpreted

Statutes Interpreted: s. 100.20 (1), Stats.

Statutory Authority

Statutory Authority: ss. 93.07 (1) and 100.20 (2)(a) Stats.

Explanation of Statutory Authority

DATCP has broad general authority, under s. 93.07 (1), Stats., to interpret laws under its jurisdiction. DATCP has authority under s. 100.20 (2) (a), Stats., to promulgate administrative rules forbidding trade practices which are determined by the department to be unfair and prescribing trade practices that are determined by the department to be fair.

Related Statutes and Rules

There are some examples of Wisconsin Statutes and rules that regulate transactions between farmers and those that purchase their crops; for example: ss. 100.07, 100.22, and 100.23, Stats. But there are none of these apply to transactions between leaf-tobacco growers and leaf-tobacco buyers.

Plain Language Analysis

Background

The existing ch. ATCP 104, Wis. Adm. Code, prohibits leaf tobacco buyers from engaging in certain practices:

- Attempting to induce another tobacco buyer to engage in specific activities that would artificially manipulate the market price for tobacco.
- Refusing to negotiate with any grower for the purchase of tobacco because such tobacco was previously graded or submitted for grade.
- Falsely representing in negotiations with a grower that any particular lot or crop of tobacco was purchased at less than the price actually paid, or that other tobacco buyer has or will cease buying tobacco.
- Purchasing tobacco under any contract which does not include a specific time within which delivery and payment are to be made.
- Giving or offering to give any grower any secret or separately stated bonus, commission, payment or other consideration.

The existing rule also prohibits tobacco growers or sellers from soliciting or receiving any secret or separately stated bonus, commission, payment or other consideration.

This rule was originally promulgated as Department of Agriculture General Order #138 in 1952. At that time, tobacco farming was a prominent business in Wisconsin, and much of the crop was sold in cash markets at the conclusion of the growing season. This rule was necessary to ensure fair transactions between growers and buyers.

Today, the crop is generally produced and sold under contract (as opposed to a cash market at the end of the season). This means that ch. ATCP 104, Wis. Adm. Code, as it is currently written, is irrelevant to the current industry.

Rule Content

This rule would repeal ch. ATCP 104, Wis. Adm. Code, in its entirety.

Summary of, and Comparison with, Existing or Proposed Federal Statutes and Regulations

There are no known federal statutes or regulations (existing or proposed) that are comparable to ch. ATCP 104, Wis. Adm. Code.

Comparison with Rules in Adjacent States

There are no known rules in adjacent states that are comparable to ch. ATCP 104, Wis. Adm. Code.

Summary of Factual Data and Analytical Methodologies

In 1953, there were about 5,800 tobacco growers in Wisconsin. In 2007, there were about 72. [Source: *Sticking with Tobacco: Dane County Farmers Still Harvest the Classic Cash Crop*. *Isthmus*, September 23, 2010 <http://www.thedailypage.com/daily/article.php?article=30626>]

Analysis and Supporting Documents used to Determine Effect on Small Business or in Preparation of an Economic Impact Analysis

TO BE COMPLETED LATER – DATCP will complete this section after the public has had an opportunity to comment on the proposed rule’s economic impact.

Effect on Small Business

This proposed rule would simply delete an outdated and obsolete chapter of the administrative code. DATCP does not anticipate any effect on small business.

DATCP Contact Person

Questions and comments related to this rule may be directed to:

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Telephone (608) 224-4928
E-Mail: kevin.leroy@wisconsin.gov

Place where comments are to be submitted and deadline for submission

Questions and comments related to this rule may be directed to:

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E-Mail: kevin.leroy@wisconsin.gov

The deadline for submitting comments relating to the economic impact of this rule must be submitted by **April 21, 2014**.

The deadline for submitting hearing draft comments will be determined at a later date.

1 **SECTION 1.** Chapter ATCP 104 is repealed.

1 **SECTION 2. EFFECTIVE DATE:** This rule takes effect on the first day of the third month
2 following publication in the Wisconsin administrative register, as provided in s. 227.22(2)(intro.),
3 Stats.

Dated this _____ day of _____, _____.

WISCONSIN DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By: _____
Ben Brancel
Secretary